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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x
KATHY CAMACHO, et al.,

3 Plaintiffs,

4 v.

19 Civ. 11096 (DLC)

5 CITY OF NEW YORK, et al.,

6 Defendants.

7 -----x
ARISBEL GUSMAN,

8 Plaintiff,

9 v.

19 Civ. 11691 (DLC)

10 CITY OF NEW YORK, et al.,

11 Defendants.

Conference

12 -----x

New York, N.Y.
January 31, 2020
2:24 p.m.

13 Before:

14 HON. DENISE COTE, District Judge

15 APPEARANCES

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Attorneys for Plaintiff (11 Civ. 11691)
21 BY: STEVEN H. GOLDMAN, ESQ.
PETER A. BARTA, ESQ.

22 NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL
23 For Defendants
24 BY: MARK D. ZUCKERMAN, Assistant Corporation Counsel

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1 (Cases called)

2 THE DEPUTY CLERK: Counsel for plaintiff Gusman,
3 please stand and state your name for the record.

4 MR. GOLDMAN: Yes. For Ms. Gusman, Steven Goldman.
5 Good afternoon, Judge.

6 THE DEPUTY CLERK: And who is with you at counsel
7 table?

8 MR. BARTA: Also for Ms. Gusman Peter Barta. Good
9 afternoon.

10 THE COURT: Thank you.

11 THE DEPUTY CLERK: And counsel for defendants in the
12 Gusman matter, please state your name for the record.

13 MR. ZUCKERMAN: Good afternoon, your Honor. Mark
14 Zuckerman for the defendants who have appeared in the case, in
15 the Gusman case.

16 THE DEPUTY CLERK: Thank you.

17 And counsel for the plaintiff Kathy Camacho and
18 others, please stand and state your name for the record.

19 MR. BERMAN: David Berman from Emery Celli
20 Brinckerhoff & Abady.

21 MR. BRINCKERHOFF: And Matthew Brinckerhoff, also from
22 Emery Celli Brinckerhoff & Abady for plaintiff.

23 MS. KUAN: Julia Kuan from the law firm of Romano &
24 Kuan for plaintiffs.

25 THE COURT: And Mr. Zuckerman, I know you are

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1 appearing as defense counsel in both cases.

2 So welcome, everyone. Thank you. Thank you for your
3 letters. This is one of two cases before me, but the first
4 case that raises similar issues was filed some time ago. It's
5 19 Civ. 5554, and summary judgment motions as well as pretrial
6 orders are due April 24th, so it's on a completely different
7 schedule.

8 MR. ZUCKERMAN: Your Honor, if I may, I believe they
9 had a settlement conference on Wednesday and they reached a
10 settlement in principle.

11 THE COURT: Well, good. That is news to me, but that
12 means I only have two active cases before me and it's all right
13 here, so that simplifies my life.

14 And I appreciate that the second case of these two
15 filed cases isn't as far along, but I just thought it would be
16 efficient for us all to meet together and try to set a schedule
17 that makes sense, because of the overlap of the issues.

18 And I know there is some dispute as to whether or not
19 we should be bifurcating class and *Monell* discovery. One of
20 these actions -- what I'll refer to as the 96 action, using the
21 last two digits in the Civ. number -- is a class action, and
22 the other one is not. So how I'd like to address this is to
23 give plaintiff's counsel and then defense counsel an
24 opportunity to describe anything to me about the facts in the
25 individual actions that they want me to know as sort of

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1 background information, and then I want to talk about a
2 schedule. And there are a couple of ways to approach the
3 schedule issue. One is to see if there's some core discovery
4 that should be immediately exchanged or produced and see if
5 that is useful in an early settlement discussion. It may not
6 be, and so that's one thing I want to hear from counsel,
7 whether we should sort of focus some of our efforts on an
8 exchange of core discovery and early settlement or not.

9 Another issue is: what would be the difference between
10 conducting discovery with respect to the individual plaintiffs
11 in the actions and conducting the discovery as if this were a
12 class action or the *Monell* claim proceeding at the same time as
13 the individual claims. It's not clear to me what additional
14 discovery is going to be applicable only to the class action or
15 only to the *Monell* claims and not otherwise relevant to pursue
16 with the individual claims. So that's another thing I want to
17 hear from counsel about.

18 So let's start, just giving everyone an opportunity to
19 give me background information factually about their case, if
20 there's anything you want to fill me in on that may be
21 relevant, so then we're setting the schedule going forward.

22 Mr. Berman, do you want to start.

23 MR. BERMAN: Sure. Thank you, your Honor.

24 So our case is on behalf of five individuals who all
25 were arrested at Rikers Island under factually

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1 indistinguishable circumstances. They all brought books to
2 Rikers Island, some of them -- one was a book of crossword
3 puzzles, some that were novels, one was the Quran -- and then
4 they went through security and books were taken, they were put
5 in a separate room, held for an extensive amount of time,
6 usually around 24 hours, all in all, and were arrested and
7 charged with promoting prison contraband. They were accused of
8 having synthetic marijuana, which is referred to as K2, on the
9 pages of their books; and then all charges were dismissed at
10 the first court appearance when lab tests came back reflecting
11 there was no K2 on any of the books. Nonetheless, all five of
12 them were still banned from all city correctional facilities
13 going forward for a period of six months to a year. This meant
14 they couldn't see, in one case a child, and in another case a
15 significant other, other cases close friends, and all the
16 inmates whom they were visiting were also banned from having
17 contact visits, even though this really all amounted to much
18 ado about nothing.

19 And I think the point we just want to emphasize is how
20 similar all these facts, the facts were and the fact that the
21 Gusman case and the other case -- I think it's Williams that
22 settled yesterday -- and sort of just teeing up some of the
23 issues that you had mentioned before, that this really goes to
24 the core of -- is this some, you know, coincidence that these
25 were all settled, that these all occurred in these identical

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1 circumstances, or is this a policy or practice of the city that
2 is authorizing these arrests on what seems to us as less than
3 probable cause, and we believe it's happened to others, and we
4 filed suit to attack that policy or practice, whatever it may
5 be.

6 I think those are some of the straightforward facts,
7 and I'll --

8 THE COURT: Let me just ask one question --

9 MR. BERMAN: Sure.

10 THE COURT: -- Mr. Berman. Are there any special
11 damages for any of your plaintiffs -- that is, any physical or
12 mental injury other than would be readily evident from what you
13 just described?

14 MR. BERMAN: No, except that one plaintiff -- I
15 believe only one, but perhaps two -- had some economic damages
16 in that they were out of work for a number of weeks because
17 they were suspended as a direct result of the arrest until the
18 process was cleared; but as far as additional physical or
19 emotional damages, no.

20 THE COURT: Thank you.

21 And Mr. Goldman.

22 MR. GOLDMAN: Yes, Judge.

23 So Ms. Gusman went to visit her parents on January 3rd
24 last year at Rikers Island. They happened to be incarcerated
25 there at the time. She brought with her I think five or six

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1 magazines that she bought off an outdoor rack. I think it had
2 rained somewhat recently so they were a bit -- or they had
3 gotten a little wet and then they'd dried. She went there with
4 her little brother, who I think was 9 or 10 at the time. And
5 at some point when she was going to visit one of her parents,
6 with the magazines in tow, she gave the magazines to them, they
7 pulled her out of line, asked her if she had anything to
8 declare about the magazines; she said, of course, no. They
9 claimed to test -- they put her in a cell, claimed to test the
10 magazines, and claimed, based on a preliminary lab test, that
11 the magazines had K2, synthetic marijuana. She was then
12 brought over to central booking, of course, and had actually
13 \$15,000 bail set on her, which, fortunately, she was able to
14 pay. She was in jail -- or her family was able to pay. She
15 was in jail for over 30 hours. And unlike apparently some of
16 the other plaintiffs in this matter with co-counsel, the case
17 here resulted in three -- two additional court dates. When --
18 this is a little color to the case. When bail was set, she
19 literally howled in anguish, thinking that she was going to be
20 going to jail.

21 It turned out that there was no K2. They did an
22 actual lab test, and that actual lab test showed that there was
23 no K2 on the magazines. And so on the second adjourned date,
24 after the arraignment, the case was finally dismissed.

25 There are no special damages that I'm aware of.

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1 And if there's anything else you'd like me to address,
2 I'm happy to do so.

3 THE COURT: No. That's very helpful background.
4 Thank you.

5 Mr. Zuckerman.

6 MR. ZUCKERMAN: Thank you, your Honor.

7 It is defendants' position that, you know, probable
8 cause is an individualized determination and that the issue or
9 question of probable cause is individualized to each of the
10 plaintiffs in this case. Essentially each plaintiff was
11 visiting someone or claimed they were visiting someone and came
12 to Rikers Island and went through the security line. The
13 correction officers who were manning the security line observed
14 a certain texture or liquid on certain books that the
15 plaintiffs were trying to bring into Rikers. At that point,
16 based upon those observations, a field test was conducted on
17 each of the liquids that was on the books that the plaintiffs
18 were bringing into Rikers Island. The field test came up
19 positive for K2.

20 We strongly disagree with plaintiffs' assertion that
21 when the NYPD lab results came back, that those lab results
22 showed that there was no K2 on the books that were brought into
23 Rikers Island, or attempted to be brought into Rikers Island by
24 the plaintiffs. The NYPD lab has a limited number of
25 comparators, and what that test shows is that the substances

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1 brought into Rikers Island by the plaintiffs didn't match up
2 with the comparators in the NYPD's lab library, but that
3 doesn't mean there wasn't K2 that the plaintiffs were
4 attempting to bring into Rikers Island.

5 We contend that each of these claims turns on
6 individualized questions of probable cause.

7 THE COURT: So explain to me, I guess, the limitations
8 on the testing for K2 that can result in the city not being
9 able to move forward with a prosecution.

10 MR. ZUCKERMAN: All I can really say at this point is
11 that the K2, or alleged K2, that is being brought into Rikers,
12 the NYPD lab has a certain number of -- has comparators, and if
13 the substance that the plaintiffs are trying to bring into
14 Rikers matches up with those comparators in the NYPD lab, then
15 it will come out positive, but if it doesn't match, then it
16 comes back negative, but I guess my point is that there could
17 be additional comparators that would be positive for K2 that
18 the NYPD lab doesn't test for.

19 THE COURT: So are the pages or books at issue
20 preserved?

21 MR. ZUCKERMAN: I have put preservation notices in to
22 the NYPD to preserve the physical evidence, yes.

23 THE COURT: So are you in a position then to say that
24 you will be able to widen the library of comparators and
25 perhaps discover K2 on these pages or not?

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1 MR. ZUCKERMAN: You mean going forward?

2 THE COURT: Yes.

3 MR. ZUCKERMAN: I can't say what will happen going
4 forward, but I can say that everyone is looking at this lawsuit
5 seriously and looking at what to do going forward, but
6 certainly no decisions going forward about the question that
7 your Honor just asked.

8 THE COURT: So if I understand it then correctly,
9 there is a field test that the city uses at Rikers Island to
10 test for K2.

11 MR. ZUCKERMAN: That's correct, and that field test,
12 it's my understanding, is used in a bunch of other
13 jurisdictions around the country.

14 THE COURT: And have there been any cases in which
15 books have been seized and sent to the NYPD lab and there has
16 been a positive hit because there is a comparator present in
17 the lab?

18 MR. ZUCKERMAN: I believe that there have been
19 convictions, so I would assume that the answer is yes, though
20 I'm not a hundred percent sure of that. There have been, my
21 understanding, you know, convictions or pleas, but -- so I
22 would assume that's based upon positive matches with the NYPD
23 lab, but I'm not a hundred percent sure of that yet.

24 THE COURT: Okay. And you're going to be the attorney
25 managing the defense in these cases?

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1 MR. ZUCKERMAN: That's correct, your Honor.

2 THE COURT: And so how was this test used, the field
3 test? How was the field test identified? Why did the city
4 choose this field test?

5 MR. ZUCKERMAN: I believe that it's used in other
6 jurisdictions and it's an accepted, state-of-the-art, you know,
7 test. Obviously we're going to be investigating that test and
8 will look at it further as well.

9 THE COURT: Okay. And as part of that investigation,
10 you're also going to be figuring out perhaps the success rate
11 when materials are seized pursuant to the use of that field
12 test and then how frequently there are positives or negatives
13 when the NYPD lab tests those materials?

14 MR. ZUCKERMAN: Certainly in response to this lawsuit,
15 that's going to be an issue we're going to be looking at.

16 THE COURT: Okay. And have you talked with the
17 personnel who chose the field test for the city?

18 MR. ZUCKERMAN: Not yet, your Honor. Not yet.

19 THE COURT: And have you talked to the lab personnel
20 who are familiar with the NYPD lab procedures for testing the
21 seized materials, books and magazines?

22 MR. ZUCKERMAN: Not yet. We're still identifying the
23 NYPD lab personnel who would have been involved in these tests,
24 but that's as far as it's gone so far.

25 THE COURT: Now when you say there are a limited

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1 number of comparators, under what law is material seized or a
2 person held for suspected possession or transmission of K2?

3 MR. ZUCKERMAN: Well, it could be one of two
4 charges -- either narcotics, possession of narcotics, smuggling
5 of narcotics; or it could be bringing contraband into Rikers.
6 So probable cause would fall at least under those two charges
7 and maybe some other ones too.

8 THE COURT: And contraband, though, does that bring us
9 right back to narcotics and the definition contained in the
10 criminal law of what narcotics are, or is contraband more
11 broadly defined?

12 MR. ZUCKERMAN: Contraband could be more broadly
13 defined.

14 THE COURT: But in this case.

15 MR. ZUCKERMAN: It could be more broadly defined. I
16 haven't -- we haven't yet reached the point of, you know -- the
17 lab analysis of these six instances, but it could be more
18 broadly defined.

19 THE COURT: Could you look into that issue as well.

20 MR. ZUCKERMAN: Sure.

21 THE COURT: So assuming now, just for discussion's
22 sake, that the seizure of material and the arrest of
23 individuals for possession or transmission of contraband is no
24 broader, in this case, on these set of facts, than whether or
25 not the materials contained narcotics, so we circle back to the

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1 first of the two reasons you gave, then what particular
2 narcotic or definition of narcotic are you relying on?

3 MR. ZUCKERMAN: I believe K2 is a synthetic marijuana.

4 THE COURT: And --

5 MR. ZUCKERMAN: Synthetic cannabinoid.

6 THE COURT: Okay. Would you mind writing me a letter
7 describing the specific substance or substances that permit
8 seizure --

9 MR. ZUCKERMAN: Sure.

10 THE COURT: -- so I can just make sure I'm focused on
11 the right subsection of the law.

12 MR. ZUCKERMAN: Sure. Sure.

13 THE COURT: So there's a chemistry that's involved or
14 a molecule that's involved under that legal definition, I take
15 it. I'm trying to understand why the exemplars or samples in
16 the library, why there has to be a greater number.

17 MR. ZUCKERMAN: All I'm saying is the field test may
18 be broader than the test at the NYPD lab is doing, and that
19 just because the NYPD lab results come back negative, doesn't
20 mean that that result means that the substance that they were
21 testing for is not K2, because there could be additional
22 comparators that would be K2 that are not part of the NYPD lab
23 testing.

24 THE COURT: Okay. So it's a little challenging for me
25 to understand why the NYPD lab would not have an effective test

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1 to identify any compound that is illicit under the law.

2 MR. ZUCKERMAN: I believe that the NYPD lab may only
3 be testing for controlled substances under New York law, that
4 K2 may be broader than that, but they only test for controlled
5 substances under New York law.

6 THE COURT: All right. Okay. So if that is true and
7 it's not a violation to have in your possession something that
8 is not illicit under New York law, then the field test is
9 capturing both legal and illegal activity.

10 MR. ZUCKERMAN: Well, it still could be contraband.

11 THE COURT: Oh, okay. So that takes us into that
12 second prong.

13 MR. ZUCKERMAN: Right.

14 THE COURT: And what --

15 MR. ZUCKERMAN: Just, if I can add one thing. The
16 NYPD lab may also test for K2, which is banned under federal
17 law. I'm not sure of that, but that's possible.

18 THE COURT: So you believe there's a difference in the
19 list of controlled substances under federal and state law?

20 MR. ZUCKERMAN: There may be as to K2. It's something
21 I'll have to look into.

22 THE COURT: Okay. So if you could in your letter --

23 MR. ZUCKERMAN: Yeah.

24 THE COURT: -- address each of these issues. And if
25 you order a copy of the transcript.

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1 MR. ZUCKERMAN: Sure.

2 THE COURT: Good. So --

3 MR. ZUCKERMAN: I will. I haven't done that yet,
4 but --

5 THE COURT: Yes. Thank you. Thank you.

6 So to the extent that probable cause is provided, in
7 the city's view, by the regulation of the transmission of
8 contraband, that that is broader than a violation of state law
9 for possession or distribution of narcotics -- and you'll
10 identify that so we can understand that.

11 MR. ZUCKERMAN: Sure.

12 THE COURT: To the extent that the NYPD law is unable
13 to --

14 MR. ZUCKERMAN: Lab.

15 THE COURT: -- lab -- thank you -- is unable to
16 identify those substances which are possessed in violation of
17 state law, I'd like to know that. To the extent that the field
18 test is overinclusive so it includes not only the
19 identification of substances that are possessed in violation of
20 New York State law but also other substances which are not
21 illegal under New York State law to possess, I'd like to know
22 that.

23 MR. ZUCKERMAN: I would just add that they would still
24 be illegal, because there's still contraband being brought into
25 Rikers Island, even if they're not a controlled substance under

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1 New York law.

2 THE COURT: Well, perhaps, but that's the first issue
3 you're going to explain and address --

4 MR. ZUCKERMAN: Sure.

5 THE COURT: -- what is this broader category that
6 expands beyond possession of a substance banned under New York
7 State narcotics law. Obviously we're not talking about
8 contraband as far as weapons or cigarettes or -- I understand
9 that the contraband law would be broader than the narcotics
10 law, but we're talking about substances that could be contained
11 on the pages of books or --

12 MR. ZUCKERMAN: Or maybe rolled up and smoked by an
13 inmate.

14 THE COURT: That's right. That's right.

15 Good. Good. That will be very helpful to me. Thank
16 you.

17 So let's just talk generally then about whether it
18 makes sense for the individual plaintiffs and the defendants in
19 this case to try to identify core discovery and have a fairly
20 quick settlement discussion to see if that succeeds in
21 resolving the case for the parties or whether that's just a
22 nonstarter and you should avoid trying to identify such core
23 discovery, setting then a schedule for early settlement
24 discussions.

25 Do you have a view on that, Mr. Berman? Just as a

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1 theoretical matter.

2 MR. BERMAN: Yes. I think our view is that the core
3 discovery would be the *Monell* discovery that they are saying
4 they want to bifurcate and that, you know, we can do discovery
5 on the individual circumstances of the five plaintiffs, but I
6 think that there's the overarching issue of the case, a lot of
7 questions you just asked, you know, about what is the process
8 here about the field tests, about what the policy is. So if we
9 can do *Monell* discovery, I think that would very quickly assess
10 the strength of the case and whether we're talking about five
11 individuals or something much bigger, but --

12 THE COURT: So I don't think it's helpful to me to
13 talk about *Monell* discovery. I think the issues I've been
14 inquiring about would be issues in this case if there were just
15 individual claims --

16 MR. BERMAN: Okay.

17 THE COURT: -- for an individual plaintiff. Now there
18 may be additional issues that are implicated by *Monell*
19 discovery, but any individual plaintiff has a right to
20 understand I think the reliability of the field test and how
21 the field test interacts with the New York lab analysis in
22 their hits. And so if I just had one plaintiff and no claim
23 against the city and no class action, I think that single
24 plaintiff would have a right to explore these issues. Do you
25 think that's right?

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1 MR. BERMAN: I think they would. I don't know that
2 defense counsel would necessarily agree, but I --

3 THE COURT: Well, that's why you have a judge, if
4 there are disputes, yes. But --

5 MR. BERMAN: Yes, I think they would. And also, just
6 to be clear, today is the first we've heard about any field
7 test and that none of our plaintiffs at the time of their
8 arrest were told there were field tests. We heard no
9 allegations by a field test. I sort of heard in passing that
10 that had come up in the context of one of the other cases, but
11 that's sort of this whole new realm of discovery that is news
12 to me right now.

13 THE COURT: That's helpful. Thank you.

14 So if I'm correct that an individual claim implicates
15 all of these issues, I return to my first question of: From
16 your client's point of view, would identifying core discovery
17 and quick settlement discussions be useful to explore or not?

18 MR. BRINCKERHOFF: If I may just point out one -- if
19 it were only an individual case, I think that that might well
20 be true, although it could be quite complicated perhaps given
21 some of the scientific issues we may have to address here, but
22 because it's a putative class action and it's obvious that just
23 even from what we heard today, that it would appear that the
24 policy is, whenever there's a book or any paper material that
25 appears to have been moist or wet at some point in time,

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1 conduct a field test, you have that field test then be the
2 basis for an arrest, that there is a common practice taking
3 place. Part of any discovery, even if it were just in aid of
4 trying to settle the case, I think would have to include the
5 core issues about liability that I think the Court has been
6 identifying here today, as well as the number of people who
7 have been charged with whatever -- I think the charges may have
8 varied a bit -- but charges that stem entirely from the
9 defendants at DOCS conducting a field test that comes back
10 positive that then results in an arrest and a charge and
11 everything that follows from that. That's the core of both
12 class, the practice, and the case. If the question is, what
13 would we need to have meaningful discussions about settling the
14 case on behalf of everybody who's similarly situated based on
15 this policy, we would need to know the liability issues, which
16 we've been talking about, and we would need to know the scope
17 and the number of people who were involved and get basic
18 discovery into the number of hours, days that they were held,
19 things of that sort.

20 THE COURT: Okay. So I'm hearing no. Okay. Fine.
21 So that's helpful. Okay. So we won't plan on identifying core
22 discovery and trying to quickly move into settlement
23 discussions.

24 MR. GOLDMAN: May I address that.

25 THE COURT: Yes.

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1 MR. GOLDMAN: So our situations are obviously similar
2 but not exactly analogous. They have a putative class. We do
3 not. And that's obviously not an insignificant distinction. I
4 think that for us, to identifying the core discovery issues and
5 reaching possibly an early settlement is potentially viable.

6 THE COURT: Oh, good.

7 So let me ask you, Mr. Zuckerman, how long will it
8 take you to have the kinds of discussions you said you wanted
9 to have to better understand any distinction there may be as
10 relevant to this case, or these cases, between the seizure of
11 contraband and the seizure of material which contains narcotics
12 and understand the laboratory and field test comparison issues
13 we were talking about? How many weeks is it going to take you?

14 MR. ZUCKERMAN: I would like three weeks.

15 THE COURT: Sure.

16 So let's have the schedule here. I'll take a letter
17 from you on February 21st addressing those issues; then we're
18 going to ask Ms. Rojas, please, to identify -- I'm going to
19 suggest February 28th for a conference. I'm going to ask
20 counsel then to meet and confer before February 28 to come up
21 with a proposed discovery schedule so that you'll have that
22 information in hand and I think will be in a better position to
23 plan going forward.

24 February 28 at?

25 THE DEPUTY CLERK: At noon, February 28.

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1 THE COURT: And please, in those discussions, be as
2 specific as you can with respect to a schedule for initial
3 interrogatories and document demands, number of depositions
4 that you need. I know that you have live issues with respect
5 to bifurcation and so you may not be in agreement, but I'd like
6 letters. So the Thursday before, at noon -- that's
7 February 27th at noon -- with your prospective proposal for
8 scheduling this case going forward.

9 Now of course if you have agreement, that's great, but
10 if you don't, put in your own letters. You don't need to try
11 to negotiate a single letter. I'll take separate letters from
12 you. And let's put a limit on those letters of four pages in
13 length; no longer than four pages, individually.

14 We have a motion made January 24th in the 96 case to
15 dismiss the claim seeking injunctive and declaratory judgment
16 relief.

17 MR. ZUCKERMAN: Your Honor, as well as the *Monell*
18 claims.

19 THE COURT: Thank you. So I think what I'd like to do
20 is just stay briefing on that until we have our next
21 conference, and then I'll have a better handle -- I think we
22 all will -- on this case. And if it makes sense to schedule
23 briefing of that motion at that time, we will.

24 MR. BERMAN: Your Honor, we were at least seriously
25 contemplating amending our complaint in response to that

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1 motion, and I guess I would ask, do we still amend in the 21
2 days as of right or is that time also stayed?

3 THE COURT: I think that's a very useful issue. I
4 think you should amend, so we have some stability when we're
5 looking forward.

6 MR. BERMAN: Okay.

7 THE COURT: So your date of amendment, was that
8 February 14th?

9 MR. BERMAN: I think that would be the 21 days, yes.

10 THE COURT: So that will be an amended pleading in the
11 action 96.

12 MR. BRINCKERHOFF: Can I just -- in addition to what
13 the Court laid out and requested the defendants to provide in
14 this letter, I think it would be helpful for everyone,
15 especially given what we've heard here today, if the city could
16 identify the field test that they're using apparently in all of
17 these cases so that we can start to get to work on that piece,
18 and perhaps explain it's all about what the policy is. There's
19 clearly a policy in place of some sort that is at the root of
20 all of this. If we understand that, I think we can better plan
21 discovery, motions, and everything else.

22 THE COURT: Well, certainly the identification of the
23 field test, do you have any objection to that, Mr. Zuckerman?

24 MR. ZUCKERMAN: No. I mean, that would have had to
25 have been part of the letter that your Honor outlined anyway.

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1 THE COURT: Good.

2 And I'm going to ask counsel please to meet and confer
3 and talk about informal discovery with each other. See if you
4 can cut through the heart of this as soon as possible and make
5 good use of our time on the 28th.

6 I want to thank everyone for their presence here. I
7 look forward to learning more about all of this on the 28th.
8 Thank you, counsel.

9 ALL COUNSEL: Thank you, your Honor.

10 THE DEPUTY CLERK: All rise.

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